

## **REMARKS/ARGUMENTS**

In response to the Office Action mailed January 16, 2009, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claim 1 is amended, no claims have been added, Claims 2 and 19 were previously cancelled without prejudice and Claims 18 and 20-34 have been previously withdrawn from consideration so that Claims 1, 3-18 and 20-34 are currently pending. No new matter has been introduced.

Claims 1 and 3 were rejected as being unpatentable over U.S. Patent No. 6,348,064 to Kanner (Kanner) in view of U.S. Patent No. 6,113,612 to Swanson et al. (Swanson) and Claims 4-17 were rejected as being unpatentable over Sakura and Swanson. These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re* Vaeck, 947 F.2d, 488, 20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re* Royka, 490F.2d 981, 180 USPQ 580

(CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In *re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

Kanner discloses a staple and stapler for closing a wound. The staple is deformable and includes a plurality of tissue-piercing prongs which are expanded outwardly, inserted into tissue and collapsed inwardly to close the wound. More specifically, the staple comprises a plurality of prongs and a plurality of tabs.

Swanson discloses an anastomosis apparatus. The apparatus has axial spaced portions that include members that are radially outwardly deflectable from other portions of the apparatus. The apparatus is annularly **enlargenable**. The device may include polymers and therapeutic agents.

Neither of the references, whether taken alone or in combination, discloses or even suggests the device of amended independent claim 1. Specifically, the references fail to suggest an anastomosis device having a sinusoidal ring in its undisplayed state and a flat ring in its deployed state with staples that are evented, as shown in Figure 13, in combination with a biocompatible vehicle and at least one therapeutic agent. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable Action on the merits is earnestly solicited.

Respectfully submitted,

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